

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNETH E. LANE,

Plaintiff(s)

vs.

WILLIAM A. TANNER, Warden

Defendant(s)

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Case Number: 1:02cv813-SJD

District Judge Susan J. Dlott

ORDER

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Timothy S. Black filed on April 21, 2005(Doc. 17), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired May 10, 2005, hereby ADOPTS said Report and Recommendations.

IT IS ORDERED that the petition for writ of habeas corpus pursuant to 28 U.S.C. 2254 is hereby DENIED with prejudice.

A certificate of appealability shall not issue with respect to the claim alleged in Ground Three of the petition, which this Court has concluded is waived and thus barred from review on a procedural ground, because “jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling” under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). A certificate of appealability also shall not issue with respect to the claims alleged in Grounds One and Two of the petition, which were addressed on the merits herein, because petitioner has failed to make a substantial showing of the denial of a constitutional right in those grounds for relief. *See* 28 U.S.C. § 2253(c); Fed. R.

App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order adopting the Report and Recommendation would not be taken in “good faith,” and, therefore, DENIES petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge